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PRIVILEGED COMMUNICATION AND THE MILITARY CHAPLAIN

BY

CH (COL) MICHAEL G. ORTIZ

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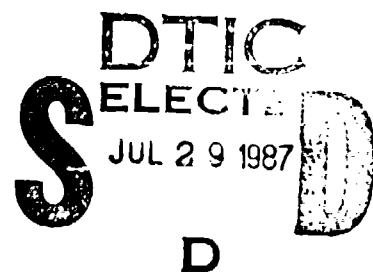
PRIVILEGED COMMUNICATION AND THE MILITARY CHAPLAIN

An Individual Essay

by

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ABSTRACT

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Clergymen have traditionally been taught to respect the confidentiality of information communicated to them by their church members. Society as a whole respected the communication established in the minister-communicant relationship. The term used most frequently and dating back to biblical times was "confession", and the information obtained in the confession was considered "confidential". The sacramental confession made to a priest has a rich historical tradition. The purpose of this paper is to trace the origin of the legal term "privileged communication" as applied to the priest, minister, or rabbi, and to show that present civil legislation and military regulations are inadequate and vague in offering protection to ministers/chaplains dealing with matters of confidentiality.

PRIVILEGED COMMUNICATION AND THE MILITARY CHAPLAIN

As a young seminarian years ago, I took part in a play which left an impression on me. Entitled "The Seal of Confession," the play depicts a parish priest's personal struggles and frustrations at having knowledge of a murderer without the freedom to report him to civil authorities. It is because of his refusal to divulge the secret of the confession and his willingness to suffer the consequence that finally gets the murderer to turn himself in to the authorities. I played the role of the murderer.

Through this seminary drama I came to understand and appreciate the fact that, at least in my religion, I could confess my sins to a priest without fear of having my innermost evil thoughts, words or deeds revealed to another human being.

As I advanced in my studies and studied this doctrine of "confession" or sacrament of penance in courses such as moral theology and Canon Law, the more I came to admire the priests' firm, steadfast observance of the "seal of confession". As a newly ordained priest I did not consider this too "heroic" an act -- that is, not until I got involved in counseling teenage gangs in an inner city parish and then as an auxiliary prison chaplain. Teenagers involved in drugs and prisoners who were hardened criminals would reveal information to me about which the courts were most interested in obtaining. My Church had told me I was protected by Church Law. Civil Courts thought otherwise.

ORIGINS

The earliest evidence of confession as a religious act was drawn out by the Catholic Church from Scripture, tradition and the writings of early church fathers. "Confession" was seldom used in the Old and New Testaments. Texts from Leviticus V:5, Matthew III:6, Mark I:5, and John XX:22-23 were referred to as passages that showed God's concern for the sinner and Christ's willingness to forgive and to heal.¹ The early church held public confessions and public repentance. The idea of private confession appeared in the ninth century when penitential manuals prepared by Irish monks recommended it. There is evidence that the administration of private confessions was reserved to Bishops and only for people who had committed special serious sins.²

CHURCH LAW

The origin of the term "seal of confession evolved out of the manuals advising privacy in confession and because of the penalties provided for the violation of secrecy. The Roman Catholic Church began to require each of its faithful to "confess" to the parish priest at least once a year. Church Fathers such as Clement I, Tertullian, and popular bishops like Ambrose and Augustine insisted that whatever was "confessed" to them in secret was never to be revealed.³

The first official statements dealing with the secrecy of confession are found in the works of Pope Leo I (440-461 AD) and the canons of the Fourth Lateran Council (1215 AD). The official catholic legislative document called the "Codex Juris Canonici"

would later on adopt the canon which dealt specifically with confession as a sacrament and its minister, the priest.

The present revised edition of the document has eleven canons (965-986) which deal specifically with the minister (priest) of the sacrament of penance. Canon 983 in particular states that "it is a crime for the confessor in any way to betray a penitent by word or any other manner or for any reason."⁴

Around the time of Thomas Aquinas in the 13th century canonists and theologians were in accord in emphasizing the seriousness of violating the seal of confession, regardless of the demands to reveal the privileged communication on the part of civil authority. Even Reformation like Luther or Calvin, who denied the divine origin of confession, insisted that the confidential communication between minister and communicator was never to be violated. Luther further stated that the state should not meddle in the church's affairs when it dealt with secrets of the conscience.⁵

In "Right to Silence" William Tiemann does a marvelous job of researching the position of the many reformed churches in America on the issue of privileged communication. In most of them there is at least a tacit endorsement of the privilege of communication between minister and church member who confidentially relates to him/her. They all feel that their ministers should be protected by the privilege of communication as are the priests in the confessional forum. Jewish spiritual leaders like Rabbi Mordeise Waxman and Harold Saperstein also supported the idea of rabbis maintaining a silence in matters of conscience communicated to them by a member of their synagogue.

What is the reason for the general concurrence of this issue of privileged communication? I would suggest that first of all, they (clergy) have accepted a call to be ministers of the Word in their own religious conviction. As "mediator" between God and the human being, it is the minister's task to comfort, advise, forgive, guide and intercede. Involved in this is the type of confidential communication which most human beings naturally seek. Recognizing its values and the positive effect a form of confession has on a troubled soul they have a tendency to recognize its existence in sacred writings and the support of it in the original English Common Law. A protestant minister and close friend of mine expressed his feelings about privileged communication in the following manner:

I am deeply concerned with this entire question. I have no clear advice from my church _____. I and other Protestant clergymen have neither the protection of Canon Law or statute to dictate our actions. Yet, I am firmly convinced of the sacramental nature of what occurs during confession and the unburdening of one's soul. Not only for the sacredness of what the person is sharing, but also for the almost automatic trust under which we minister. I am convinced that the disclosure of such information is contrary to my acting as a representative of God.⁷

CIVIL LAW

During the time that the English common law was being formulated the official Church of England was Roman Catholic. The people and their king were Catholic and they observed the laws of the Catholic church.

Because the religion of the Anglo-Saxons was closely tied with their laws, there is also good reason to believe that the seal of confession was recognized as the law of the land in pre-Norman England. This

recognition continued throughout Norman times during the formation of English common law.⁸

Furthermore, learned monks were utilized as judges in the king's court during this period and they most certainly assured that the sacredness of the seal of confession was upheld and honored. Even after the expulsion of the catholic clergy the idea of the inviolability of confession remained as was evidenced in the first Anglican "Book of Common Prayer".

It was not until the seventeenth century that the support of the confidentiality of a citizen's confession seems to be deleted from official documents. Tiemann states that the English statute "Articuli cleri" never guaranteed the right of secrecy of the confession, nor that there was ever a pre-Reformation parliamentary law recognizing the seal; yet, he does state that "there is good evidence to conclude that the seal was absolute in those Anglo-Saxon times."⁹

There may not have been a parliamentary law which recognized the seal, yet Frederick Pollack and Professor Maitland in their "History of English Law" refer to the "jus commune" (common law) of the universal church as the law of the Church in England. Canon law came to England in 600 AD when the English were converted to Christianity and this law of the Church was a significant factor in English legal history.¹⁰

After the Declaration of Independence in 1776 and the adoption of the United States Constitution in 1789 a new and unique legal system was created in our country. Federal and state governments worked alongside each other and each were empowered to exert authority in their specific areas.

In dealing with the area of privileged communication the judiciary system was rather vague. It recognized the privilege between attorney-client and husband-wife. But it was not at all specific in the minister-penitent relationship. It "tolerated" or respected the privileged communication of the clergyman but never clearly defined it. As it exists today the federal law recognizes two kinds of privileged communication: the absolutely privileged and the qualifiedly privileged. The first of these prohibits any legal action to be taken against the originator of the communication and can be made only by a judge or a legislative body. The second deals with communications between doctor-patient or husband-wife. Although the priest-penitent relationship is placed in this category it is not specifically mentioned. It is left to the individual states to define or legislate the laws governing priest, minister, rabbi communications. Currently, all but one state (West Virginia) have established statutes which protect the privileged communication between clergyman and "client" but many of these are outdated and insufficient.

The states have often defined the privileged communication laws according to the criteria of a legal scholar named Professor Wigmore. According to him, four criteria are to be met before privileged communication is acceptable: (a) it must be made with the intent of not revealing it to another, (b) the inviolability of the confidence is essential to achieve the purpose of the relationship, (c) the disclosure of the communication would do more personal harm than good, and (d) the relationship is intended to assist the communicator in obtaining certain goals.¹⁰

Professor Wigmore places the clergy-parishioner relationship in the same category as the lawyer-client and husband-wife. Although the statutes will vary from state to state (see statutes at Appendix I) there are basically four pre-requisite conditions which are applied in order for the communication (priest-penitent) to be privileged: (a) the communication must be professional in nature, not casual, (b) it must be made in the course of a discipline enjoined by the church to which the minister belongs, (c) the communication must be penitential or confessional in nature, and lastly, (d) the nature of the relationship (i.e. is it spiritual and is it to any person regardless of denomination). These, together with the criteria offered by Wigmore are helpful but they are restrictive in nature. For example, there are no provisions made for the minister involved in special ministries such as counseling in spiritual direction, psychiatry, drug and alcohol clinics, child abuse centers, or prison ministries. These ministries involve the communication of confidential information to a minister in the capacity of clergy/counselor; yet there is nothing to protect the confidentiality in a court of law.

MILITARY LAW

In the military system the clergy-penitent privilege is recognized as an essential element in a chaplain's relationships with soldier and family member. Confidential communication between the minister and another person is considered "privileged communication" and as such cannot be required to be divulged in

military courts. The military law concerning privileged communication is contained in Military Rule of Evidence 503, "Communication to Clergy" Manual For Courts-Martial, United States.¹¹ Further guidelines are offered by the different branches of the Armed Forces.

Three important factors must be understood about the legal aspects of privileged communication as they are cited in the Military Rule of Evidence 503, the Army Regulation 165-20, Air Force Regulation 265-1, section C, 12c, and the Navy Chaplain's Manual, OPNAVINST 1703.1, section 6300, subsection 6302.1. My appraisal of the MRE and the respective chaplain manuals are the following:

1. "Privileged Communication" is a legal term that, when applied to communication, cannot be required to be revealed in a military courts-martial. It does not apply to testimony before a civilian court. The statutes will vary from state to state with regard to clergy confidentiality (see Appendix I).

Revealing confidences to sources other than the courts is a matter of "confidentiality" and will be governed by ecclesiastical law, the common good, or the individual's own convictions. There is no rule protecting chaplains or communicants regarding confidentiality.

2. The MRE 503 (b)(2) applies to all communication given in confidence to a chaplain (minister, priest, rabbi, or any clergy person), a chaplain assistant, or a person mistakenly believed to be a chaplain and is based on the Proposed Rule of Evidence 506 (a)(2). The rule may perhaps even apply to a third party who may have overheard the privileged communication (eg. a secretary).

3. It must be clearly understood that it is the "communicant" or "communicator" not the chaplain who is granted the privilege to have the communication kept confidential. Therefore, the chaplain must keep the confidence unless released by the communicant. Under MRE 503, there is no exception allowing the chaplain to testify or to break the confidence in a courts-martial proceeding.

The Military Rule of Evidence is thus consistent with the definition of "confidential" used in the lawyer-client privilege and it further recognizes that military life often requires transmission of communications through third parties.

A CHAPLAIN'S DILEMMA

Even though there seems to be more definitive legislation for ministers serving in the military as chaplains, there are still dilemmas facing the priest, minister or rabbi. As chaplains in the military we are "dual-hatted", we assume the role of officer on the one hand, and minister on the other.

As officers we took an oath and swore allegiance to our nation, to the branch of service we volunteered for, and we assumed the responsibility of ministering to the soldier and his/her dependents. We are accountable to the command for the religious program in a unit or on a post/base.

It is in the role of minister, priest, or rabbi, that we are faced with dilemmas. When individuals come to us it is almost always in this role, as a person of God. They come out of despair, loneliness, pain, anger, suffering, anxiety. They come

to arrange for baptisms, bar mitzvahs, weddings, or funerals. They come just to unburden their souls to the one person whom they believe will never betray them. As long as the communication made with this clergy person is considered privileged by the law, then the chaplain is bound to silence in the courts. However, there are limitations as defined by the Military Rule of Evidence and the respective service regulations.

What does the chaplain do about the trust of silence when the courts decide that the communication is not privileged or when sources other than the courts oblige him/her to divulge the confidences of an individual? A soldier confesses to a priest that he intends to "get even" with his platoon leader, a sailor tells his protestant chaplain that he has abused his daughter, an airman confesses to his rabbi that he is a homosexual. How do these chaplains respond or react when subpoenaed or ordered by a commander to release such confidential information? In the role of officer and minister a tension may arise in the mind of the chaplain. There may be no easy solution or response to the doubts or questions.

In a case before the US Army Court of Military Review, (US v. Moreno, 20 MJ 623, 1985) Senior Judge Yawn held that a military judge erred in allowing a chaplain to testify over the accused's objection that his conversation with the accused was privileged. A federal court held that the information (letter) which a penitent gave to a priest was not privileged because it was not indicated that it was to be kept secret (US v. Wells, 446, F 2d 2, 1971). The priest-penitent communication was not considered "privileged" in a confession because a prison guard

had been present (US v. Webb, 615 F 2d, 828, 9th Cir. 1980). A communication by a penitent to the deacon in a local church was not considered confidential because the conversation was between friends (US v. Garries, 19 MJ at 859).

The basic purpose of a privileged communication is to protect the nature of a professional relationship. A few years ago the United States Supreme Court observed that "the priest-penitent privilege recognizes the human need to disclose to a spiritual counselor, in total and absolute confidence, what are believed to be flawed acts or thoughts to receive priestly consolation and guidance in return." (Frammel v US, 445 US 40, 51, 63 L.Ed 2d 186, 195 (1980)). It would seem from this that the pastoral counseling which a chaplain performs should also be protected, if it is taken in the context of a religious act. If privileges and protections for the professionals are legislated in accordance with the area of their professional practices and in terms that are understood by the public, then it follows that a minister should be protected in his professional ministry when counseling in situations other than penitential or religious actions of the discipline.

In light of what has been said in this paper it seems evident that ministers have a legitimate need for more protective legislation in the area of confidential communication. Society has changed rapidly, the need for broader forms of counseling has increased and most people still prefer to confide in their minister. Federal and state laws have been vague in protecting the confessor-penitent relationships, and even wanting in

spiritual counseling and guidance. The statutes allow for the legal officials to decide what is or is not privileged communication and this perhaps is as it should be. For the military chaplain there are further regulations recognizing the need for all clergy persons to be protected; however, these also are vague and indecisive. Chaplains in the Armed Forces of our country must minister to all soldiers, sailors, or airmen and their dependents, regardless of their religious affiliation. Most all members of the military society believe that they can approach any chaplain, regardless of denomination, and communicate "confidentially", or "confess". Young chaplains entering the military are not always clearly informed about their responsibilities and obligations as keepers of confidentiality. Based on a discussion held with Army Chaplain (BG) Israel Drazin, a practicing lawyer, the following has been prepared in order to have a better understanding of the clergy privileged communication.

1. "Privileged communication" is not "confidentiality". The former is a court Rule of Evidence. Like the Hearsay Rule it describes what evidence can be excluded during testimony in court. It does not deal with conversations outside of court. "Confidentiality" concerns conversations generally inside and outside of court. Except for denominational church rules there are no statutory laws protecting chaplains or communicants in confidentiality.

2. The "privilege communication" rule is contained in the Manual for Courts Martial, United States (MCM) 501, 503 and 510. This MCM has the practical effect of superseding the respective regulations of all branches of the service.

3. The MCM privilege may be claimed only for military judicial procedures (Rule 501) and should not be confused with clergy rules of professional conduct.

4. Communications made to the chaplain assistant or through a third party (e.g. a translator) are considered privileged (Rule 503).

5. The communication must be made to the chaplain in his/her capacity as a spiritual counselor or to the chaplain assistant in his/her official capacity (Rule 503).

6. The communication must be made "either as a formal act of religion or as a matter of conscience" (Rule 503 (a)). A formal act of religion is similar to the Roman Catholic Confession. No one knows what "matter of conscience" means. It is clear that it does not cover all communications made to chaplains.

7. Communications revealed to fellow chaplains, including supervisory chaplains, are not privileged except when this communication is made to further the purpose of the original communication (Rule 503).

8. The communicant may waive the privilege and the chaplain would be obligated to disclose the communication. (Rule 503)

9. The communicant may claim the privilege against disclosure of an object, information about behavior, or any other matter that was communicated. (Rule 501)

In the final analysis, it is the individual chaplain who will stand alone before a court of justice or his commanding officer and will have to make his decision of whether "To tell or not to tell". The most effective chaplains are those who take risks in their ministry to soldiers, the individuals who stand firm to that conviction on matters of faith and morals. They are the ones who gain the honor, respect and confidence of their fellow soldiers. In my opinion, to force a chaplain to divulge confidential communication whether in the confessional or outside of this sacramental act is a violation of the free exercise clause of the First Amendment. It threatens my religious convictions with further interference and it will destroy the unique clergy-penitent relationship which society honors and

enjoys. Every denomination should adopt definitive clear-cut regulations requiring their ministers to respect the confidential communication of their people. They should urge every state legislature to review and redefine statutes that will further protect confidentiality. The Military Rules of Evidence must protect the confidentiality of both chaplain and communicant. The person approaching the chaplain may not be concerned about his communication to the chaplain being a "formal act of religion" or a "matter of conscience". He wants the assurance that his unburdening will not be reported, divulged or revealed to anyone else. He just might want to "talk", or he might want a "mediator". Without a trust or confidence in his chaplain, the troubled person might not do either.

CONCLUSION

It has been thirty years since I played the murderer in the "Seal of Confession." In those thirty years my real-life role has been that of priest/confessor as a civilian and as a military chaplain. In both positions I have experienced the personal struggles and frustrations experienced by the parish priest in the play. There has never been an easy answer in dealing with confidentiality: however, there has been a peace of mind whenever I followed my conscience and the advise of other experienced individuals. If I could promote the "Ten Commandments" of a chaplain for communications whether confidential or privileged, they would be the following:

1. Become familiar with the rules and guidelines of your denomination in dealing with confidentiality.

2. Learn always to maintain silence on confidential matters until you are satisfied that you are free to divulge.
3. Familiarize yourself with the Federal and state laws as well as the Military Rule of Evidence.
4. Train staff members, chaplains assistants, secretaries to respect confidentiality and to file confidential records as required.
5. Assure that commanders understand your position on matters dealing with confidentiality.
6. When you receive confidential information which, in your judgement, should be divulged to the commander or another authority make every effort to convince the counselee/penitent to inform the proper authority or to give you permission to do so.
7. Obtain guidance from a supervisory chaplain or senior chaplain with whom you feel confident.
8. Seek professional help from an attorney (civilian or military).
9. Explain to the counselee/penitent that it is not the chaplain but the trial judge who will finally decide whether the communication is privileged.
10. "Be true to your calling."

APPENDIX I

STATUTES DEALING WITH PRIVILEGED COMMUNICATION & CLERGYMEN AS OF 1983

ALABAMA - Code Title 12, section 21-166 Confidentiality of Communications with Clergymen.

ALASKA - Civilian Rule 43-h (3) - Confessor-Confessant Privilege.

ARIZONA - Arizona revised statute, section 12-2233 Clergymen or Priest and Penitent.

ARKANSAS - Arkansas Rule of Evidence 505, Religious Privilege.

CALIFORNIA - California Evidence code section 1033-1034, 1030-1032, 917, 912 Privilege of Penitent, Clergymen, Penitential Communication.

COLORADO - Colorado Revised Statute, section 13-90-107, Who May Not Testify Without Consent.

CONNECTICUT - Connecticut General Statute section 52-146 b, Privileged Communications Made to Clergymen.

DELAWARE - Delaware Code Annex title 10, section 4316 Prohibition of Examination of Minister of Religion.

DISTRICT OF COLUMBIA - D.C. code section 14-309, Clergy.

FLORIDA - Florida Statute, section 90-505, Privilege with Respect to Communications to Clergymen.

GEORGIA - Georgia Code Annex, section 38-419.1, Communications to Ministers, Priests and Rabbis.

HAWAII - Hawaii Revised Statute, section 621-20.5, Communications to Clergymen.

IDAHO - Idaho Code Section 9-203. Confidential Relations and Communications.

ILLINOIS - Illinois Revised Statute Chapter 51, section 48.1, Immunity.

INDIANA - Indiana Code Section 34-1-14-5, Incompetency as Witness.

IOWA - Iowa Code Section 622.10 Communications in Professional Confidence.

KANSAS - Kansas Statute Annex section 60-429, Penitential Communication Privilege.

KENTUCKY - Kentucky Revised Statute section 421-210 Competency of Certain Testimony.

LOUISIANA - Louisiana Revised Statute Annex section :477-478, 14:403 Privileged Communications to Clergymen.

MAINE - Maine Rule of Evidence 505, Religious Privilege.

MARYLAND - Maryland Courts and Judicial Process Code Annex section 9-111, Minister, Clergymen or Priest.

MASSACHUSETTS - Massachusetts Annex Laws chapter 233, section 20A, Certain Communications to Priests, Rabbis, Ministers.

MICHIGAN - Michigan Comp. Laws section 600.2156, 767.5a Minister, Priest, Rabbi, Christian Scientist Practitioner.

MINNESOTA - Minnesota Statute Section 595.02, Competency of Witness.

MISSISSIPPI - Mississippi Code Annex section 13-1-22, confidentiality of Priest-Penitent Communications.

MISSOURI - Missouri Revised statute section 491.060, Persons Incompetent to Testify.

MONTANA - Montana Code Annex 26-1-801, 26-1-804 Policy to Protect Confidentiality and Confessions Made to a Member of the Clergy.

NEBRASKA - Nebraska revised statute section 27-506 Communication to Clergymen.

NEVADA - Confessor and Confessant privilege (Section 49.255).

NEW HAMPSHIRE - New Hampshire Revised Statute Annex section 516:35, 330-B:15, Privileged Communications and Licensing of Pastoral Counselors.

NEW JERSEY - New Jersey Statute annex section 2A:84A-23, Present Penitent Privilege.

NEW MEXICO - New Mexico Rule of Evidence 506, Communications to Clergymen.

NEW YORK - New York Civilian Practice Law and Rules section 4505 Confidential Communication to Clergymen.

NORTH CAROLINA - North Carolina General Statute section 8-53.2 Communications Between Clergymen and Communicants.

NORTH DAKOTA - North Dakota Rule of Evidence 505 Religion Privilege.

OHIO - Ohio Review Code Annex Section 2317.02 and 2921.22 Privileged Communications and Acts.

OKLAHOMA - Oklahoma Statute Annex title 12, section 385 and 2505 persons Incompetent to Testify and Religious Privilege.

OREGON - Oregon Revised Statute section 44.040 Confidential Communication.

PENNSYLVANIA - Pennsylvania Constitution Statute annex section 5943 Confidential Communication to Clergymen.

PUERTO RICO - Puerto Rico Laws annex title 32, section 1734 Privileged Matters.

RHODE ISLAND - Rhode Island General Laws section 9-17-23 Privileged Communications to Clergy.

SOUTH CAROLINA - South Carolina Code section 19-11-90, Priest Penitent Privilege.

SOUTH DAKOTA - South Dakota Codified Laws section 19-13-16 to 18, Religious Privilege.

TENNESSEE - Tennessee Code Annex section 24-109 to 111 Clergymen - Communications Confidential.

TEXAS - Code of Criminal Procedure, Chapter 38, article 38:111 Communications to Clergymen.

UTAH - Utah Code Annex section 78-24-8, Rule of Evidence 29 Privileged Communications/Priest-Penitent Privilege.

VERMONT - Vermont Statute Annex title 12, section 1607, Priests and Ministers.

VIRGINIA - Virginia Code section 8.01-400 Communications Between Ministers of Religion and Persons They Counsel of Advise.

WASHINGTON - Washington revised code annex section 5.0.060 Who are Disqualified - Privileged Communicators.

WISCONSIN - Wisconsin Statute section 905.06 Communications to Clergymen.

WYOMING - Wyoming Statute annex section 1-12-101, Privileged Communications and Acts.

ENDNOTES

1. The New American Bible, translated from the original language.

a. Leviticus: "When a person is guilty he must confess the sin."

b. Matthew: "They confessed their sins, and he baptized them in the Jordan."

c. Mark: "Many people from the province of Judea and the city of Jerusalem went out to hear John. They confessed their sins, and he bapticized them in the river Jordan."

d. John: "Receive the Holy Spirit. If you forgive people's sins, they are forgiven; if you do not forgive them, they are not forgiven."

2. Richard P. McBrien, Catholicism, Sacraments of Healing, Vol. II, p. 778.

3. Kurtcheid Bertrand, A history of the Seal of Confession, p. 45.

4. Canon Law Society of America, Code of Canon Law, p. 361.

5. Ewald M. Plass, What Luther Says, Vol I, p. 333.

6. William Fremann, Right to Silence, The Jewish Experience, p. 33.

7. Donald McSwain, Theological and Ethical Aspects of Ministry, p. 8.

8. Walter Tiemann, Ibid, p.47.

9. Ibid, p. 47.

10. Richard S. Nolan, "The Law of the Seal of Confession", The Catholic Encyclopedia, vol 13, 649.

11. Military Rule of Evidence 503, "Communications to Clergy", Chap 27, Manual for Court Martial, United States, change 3, Sept 1980:

Mil.R.Evid. 503 provides:

Communications to clergy

(a) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman or to a clergyman's assistant, if such communication is made either as a formal act of religion or as a matter of conscience.

(b) Definitions. As used in this rule:

(1) A "clergyman" is a minister, priest, rabbi, chaplain, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting the clergyman.

(2) A communication is "confidential" if made to a clergyman in the clergyman's capacity as a spiritual adviser or to a clergyman's assistant in the assistant's official capacity and is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the purpose of the communication or to those reasonably necessary for the transmission of the communication.

(c) Who may claim the privilege. The privilege may be claimed by the person, by the guardian, or conservator, or by a personal representative if the person is deceased. The clergyman or clergyman's assistant who received the communications may claim the privilege on behalf of the person. The authority of the clergyman or clergyman's assistant to do so is presumed in the absence of evidence to the contrary.

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